

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd; Adv. Proc. No. 19-08289

4 - - - - -x

5 In the Matters of:

6 PURDUE PHARMA L.P., et al.,

7

8 Debtors.

9 - - - - -x

10 PURDUE PHARMA L.P., et al.,

11 Plaintiffs,

12 v.

13 COMMONWEALTH OF MASSACHUSETTS, et al.,

14 Defendants.

15 - - - - -x

16 United States Bankruptcy Court

17 300 Quarropas Street, Room 248

18 White Plains, New York 10601

19

20 VIA ZOOM VIDEOCONFERENCE

21 March 23, 2022

22 10:00 AM

23 B E F O R E:

24 HON. ROBERT D. DRAIN

25 U.S. BANKRUPTCY JUDGE

1 19-23649-rdd Purdue Pharma L.P., et al.

2 Ch 11

3 10:00 AM

4

5 Notice of Agenda/Agenda for March 23, 2022 Hearing (ECF
6 #4577

7

8 ZOOM VIDEOCONFERENCE re Motion to File Late Proof Of Claim
9 Filed by Devin A. Pratt [ECF #4275]

10 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late
11 Claim Motion [ECF No. 4293]

12 ZOOM VIDEOCONFERENCE re Notice of Filing of Proposed Order
13 Granting Late Claim Motions [ECF No. 4530]

14

15 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after
16 Claims Bar Date filed by Wayne M. Miller [ECF No. 4294]

17 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late
18 Claim Motion [ECF No. 4305]

19 ZOOM VIDEOCONFERENCE re Notice of Filing of Proposed Order
20 Granting Late Claim Motions [ECF No. 4530]

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1 ZOOM VIDEOCONFERENCE re Motion of Debtors for Authorization
2 to Enter into Amended and Restated Funding Agreement [ECF
3 No. 4407]

4 ZOOM VIDEOCONFERENCE re Amended Declaration of Terrence
5 Ronan in Support of Motion of Debtors for Authorization to
6 Enter into Amended and Restated Funding Agreement [ECF No.
7 4408]

8 ZOOM VIDEOCONFERENCE re Affidavit of Service of Sonia Akter
9 Regarding Motion for Amended and Restated Funding, Amended
10 Declaration of Terrence Ronan, Mediator's Fourth Interim
11 Report, Motion of Debtors for Entry of an Order Authorizing
12 and Approving Settlement Term Sheet, and Debtors' Ex Parte
13 Motion for Entry of an Order Shortening Notice with Respect
14 to the Motion of Debtors for Entry of an Order Authorizing
15 and Approving Settlement Term Sheet [ECF #4482]

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Adversary Proceeding 19-08289-rdd Purdue Pharma L.P. et al.

v. Commonwealth of Massachusetts et al.

ZOOM VIDEOCONFERENCE re Motion to Extend the Preliminary
Injunction. Adv. Pro. No. 19-08289 [ECF No. 344]

ZOOM VIDEOCONFERENCE re Memorandum of Law in Support of
Motion to Extend the Preliminary Injunction. Adv. Pro. No.
19-08289 [ECF No. 345]

ZOOM VIDEOCONFERENCE re Motion for Entry of an Order
Shortening Notice with Respect to Debtors Motion to Extend
the Preliminary Injunction. Adv. Pro. No. 19-08289 [ECF No.
346]

ZOOM VIDEOCONFERENCE re Affidavit of Service of Alain B.
Francoeur Regarding Motion to Extend the Preliminary
Injunction, Memorandum of Law in Support of Motion to Extend
the Preliminary Injunction, and Debtors' Ex Parte Motion for
Entry of an Order Shortening Notice with respect to Debtors'
Motion to Extend the Preliminary Injunction [ECF #347]

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1 P R O C E E D I N G S

2 THE COURT: Okay. Good morning. This is Judge
3 Drain. We're here in In re Purdue Pharma L.P., et al. The
4 matters on the calendar today are all being heard remotely
5 primarily by Zoom for Government unless someone doesn't have
6 access to his screen in which case they're appearing by
7 telephone.

8 I have the agenda provided by the debtors' counsel
9 and filed on the docket for today's hearing. And I'm happy
10 to go down the agenda.

11 MS. KNUDSON: Good morning, Your Honor. For the
12 record, Jacquelyn Knudson of Davis Polk & Wardwell on behalf
13 of the debtors.

14 Can I be heard clearly?

15 THE COURT: Yes. Good morning.

16 MS. KNUDSON: Thank you, Your Honor.

17 I'll be handling the first two agenda items which
18 are the uncontested late claim motions. And I plan to
19 address those together.

20 Mr. Pratt's motion is at docket number 4275 and
21 Mr. Miller's motion is at docket number 4294. We've
22 carefully reviewed the motions and based on the
23 individualized assertions in the motion, the debtors believe
24 that there's a colorable basis for granting the requested
25 extension under the Pioneer factors. Both of the movants

1 are incarcerated. Mr. Pratt alleges that although he
2 attempted to mail his proof of claim prior to the bar date,
3 Prime Clerk didn't receive it until well after the bar date
4 perhaps due to some mail issues at his facility.

5 Mr. Miller alleges that COVID-19 restrictions at
6 his facility as well as postal service delays contributed to
7 his untimely filing.

8 As we've done in the past, we consulted with the
9 creditors' committee as well as the ad hoc group of
10 individual victims both of which have consented to their
11 request in the motions. Accordingly, the debtors request
12 the proposed order submitted at docket number 4530, which is
13 consistent with prior orders that we've submitted for late
14 claims be entered.

15 I'm happy to answer any questions Your Honor may
16 have.

17 THE COURT: Okay. Does anyone else have anything
18 to say on either of these two motions?

19 All right. I don't have any questions, Ms.
20 Knudson. I've reviewed both of the motions which, as you
21 noted are by pro se claimants who are incarcerated and were
22 incarcerated at the time the claims bar date in this case
23 was in place, that being July 30, 2020. Mr. Pratt states
24 that he actually put his proof of claim in the mailbox at
25 the facility where he's incarcerated two weeks before the

1 bar date. And Mr. Miller states that he didn't really have
2 contact with the outside world based on a lockdown starting
3 in March of 2020 due to the COVID epidemic.

4 Given the current status of the case, i.e.,
5 there's no plan in effect, there's no effective date of a
6 plan, and the allegations in the two motions, I can
7 understand why no one has objected to them including after
8 consultation with the creditors' committee and the personal
9 injury ad hoc committee. And under the circumstances, I
10 will order the proposed orders submitted by the debtors
11 granting the motions on the basis of excusable neglect until
12 the Pioneer/Enron decision. So you could e-mail those
13 orders to chambers.

14 MS. KNUDSON: Thank you, Your Honor. I'll now
15 turn the podium over to my colleague, Mr. Robertson, for the
16 next agenda item.

17 THE COURT: Okay. Very well.

18 MR. ROBERTSON: Thank you, Your Honor. For the
19 record, Christopher Robertson, Davis Polk & Wardwell, on
20 behalf of the debtors.

21 Can I be heard clearly?

22 THE COURT: Yes.

23 MR. ROBERTSON: Thank you. The next item on
24 today's agenda is the debtors' motion for authorization to
25 enter into an amended and restated funding agreement with

1 Harm Reduction Therapeutics. The motion is unopposed.

2 The debtors filed the execution version of the
3 funding agreement late last evening. That's at docket
4 number 4586 together with a blackline against the version
5 appended to the motion. You will see that the version has
6 been executed so Section 2.1 of the agreement that the
7 agreement is not effective unless and until this Court
8 enters an order approving it.

9 I will, of course, be happy to address any
10 questions regarding those changes which are noneconomic and
11 not expensive.

12 I would also note that the debtors filed the
13 declaration of Terrence Ronan, the debtors' CFO in support
14 of this motion at docket number 4408. In case it was
15 unclear, Your Honor, the agenda refers to an amended
16 declaration but that is, in fact, the only declaration. Mr.
17 Ronan is, of course, present on Zoom today if Your Honor has
18 any questions for him.

19 Very briefly, Your Honor, the Court may recall
20 that HRT is working to develop a low-cost naloxone nasal
21 spray device that would be available over-the-counter, in
22 essence, to try to (indiscernible) medication similar to
23 Narcan but less costly and available without a prescription.

24 What was true in June of 2020 when the prior HRT
25 funding motion was before the Court remains true today.

1 Support for the development of OTC naloxone continues to be
2 a key public health initiative with a goal that I am
3 confident that all creditors share, abatement of the opioid
4 crisis and saving lives. \$11 million of funding is both
5 modest in the context of these cases and within the public
6 health initiative budget that was excessively negotiated in
7 the context of a plan. Any change from the debtors' HRT
8 would count against our budget. There are appropriate
9 milestones and other protections built into the agreement to
10 ensure that the debtors are funding development of a product
11 that is likely to successfully address a critical need.

12 Finally, failure to fund the project would likely
13 result in a substantial (indiscernible) of revised
14 development or worse.

15 Just one final (indiscernible) Court note, Your
16 Honor, which is that the debtors have agreed that as long as
17 the UCC remains in place, we will provide the UCC with
18 reasonable complication rights with respect to any press
19 releases issued by the debtors about HRT.

20 Unless Your Honor has any questions, we
21 respectfully request that the relief requested be granted.

22 THE COURT: Okay. I did have one question. I
23 approved the -- granted the debtors' motion for a funding
24 commitment back in June of 2020. And I'm not sure -- this
25 agreement is an amendment and restatement of the parties'

1 agreements. I'm not sure whether the funding under this
2 agreement includes the amount that wasn't funded under the
3 earlier agreement. If you could just clarify that.

4 MR. ROBERTSON: Yes. Absolutely. So I kind of
5 rewind the tape. Right? So it would be the prior agreement
6 has three milestone payments. There was six and a half
7 million dollars of funding which the debtors did advance.
8 There was a five million dollar, I believe, tranche that the
9 debtors had provided we would come back to court to get
10 authorization for the time when it would be come due under
11 the agreement. That five million dollars was payable upon
12 completion of the Phase I study, successful completion of
13 the Phase I study. That study is the study that we discuss
14 in our papers that was completed successfully a few months
15 ago. And so the payment that would have been due under the
16 prior agreement is now essentially deemed folded into this
17 agreement. And it's the first three million dollar payment.
18 So it's a different amount but it's upon the same event and
19 it's for the same ongoing developmental work.

20 THE COURT: Okay. And that's because the -- when
21 they did it again, the new study was successful.

22 MR. ROBERTSON: That's correct.

23 THE COURT: Okay. All right. Does anyone have
24 anything further to say on this motion?

25 Okay. I've reviewed the motion as well as Mr.

1 Ronan's declaration. The motion is unopposed. It's similar
2 to the motion that I granted back in June of 2020, although
3 it reflects considerable further progress in the development
4 of this naloxone nasal spray device, the goal of which
5 ultimately would be the approval of the device for over-the-
6 counter use which is detailed in the motion and the Ronan
7 declaration could greatly enhance the availability of a
8 product which, if approved by the FDA, would counter the
9 effects of opioid overdoses for both greater ease of access
10 to the product being that it would be over-the-counter; and
11 secondly, at a considerably lower cost than current
12 prescription products that are comparable are going for
13 today. This development effort which is to fund the not-
14 for-profit HRT entity is one of the public health
15 initiatives that is contemplated under the plan that's on
16 appeal at this point. And, in fact, the funding budget for
17 this would fit within the heavily negotiated funding budget
18 for public health initiatives under that plan.

19 It's clear to me from the motion and the
20 declaration that the development of this product has been
21 funded essentially on a shoe string. And if the immediate
22 funding that is contemplated here in light of the completion
23 of the most recent milestone, the successful critical trial,
24 isn't paid by the end of this month, there would be quite
25 material adverse consequences for the project as a whole

1 which now has progressed considerably and has done so with
2 the active involvement and encouragement of the AMA and the
3 FDA.

4 So it appears to me to be a proper exercise of the
5 debtor's judgment given its goal which is certainly
6 consistent with the goal of the debtors since the start of
7 this case and the fact that the number of overdose deaths
8 due to opioids that could be reduced by greater availability
9 of this product continues to increase at a frightening
10 level.

11 So you can e-mail the order granting the motion to
12 chambers and it'll be entered shortly. That includes the
13 waiver of the 14-day stay under Rule 6004(h) given the
14 funding deadline of April 1st.

15 MR. ROBERTSON: Thank you, Your Honor. I will now
16 turn the podium over to my colleague, Marc Tobak, to handle
17 the PI matter.

18 THE COURT: Okay. Very well.

19 MR. TOBAK: Good morning, Your Honor. For the
20 record, I'm Marc Tobak of Davis Polk & Wardwell LLP on
21 behalf of the debtors.

22 The next two also uncontested items on today's
23 agenda are the debtors' motion to extend the preliminary
24 injunction until April 27th, 2022 which is at docket number
25 344 in the adversary proceeding. And the debtors' motion to

1 shorten notice by one day for that extension motion and
2 that's at docket number 346 in the adversary proceeding.

3 Both the motion to extend the preliminary
4 injunction and the motion to shorten notice are unopposed.
5 We also rest on the lengthy factual and legal record that
6 was established at prior hearings on the preliminary
7 injunction.

8 In addition, Your Honor, yesterday the Second
9 Circuit scheduled all argument on the appeal for Friday,
10 April 29th. The proposed order that's attached to the
11 debtors' motion is substantially identical to the order that
12 Your Honor entered on March 2nd updated to today's date.
13 Unless Your Honor has any question for the debtors, the
14 debtors will rest on their papers in support of both
15 motions.

16 THE COURT: Okay. And the motion seeks an
17 extension of the preliminary injunction through April 27,
18 correct?

19 MR. TOBAK: Correct, for the next omnibus hearing.

20 THE COURT: All right. Okay. Very well.

21 Let me deal with the motion to shorten first.
22 Does anyone have anything to say on the motion to shorten
23 time?

24 Okay. I will grant that motion. As you noted,
25 there was 13 days of this motion instead of 14.

1 MR. TOBAK: Correct.

2 THE COURT: That was in light of the timing of the
3 Court's consideration and approval of the debtors' motion
4 for approval of the settlement term sheet with the nine
5 states, the Sacklers and the District of Columbia and, in
6 part, the debtors. Given that we had today's omnibus
7 hearing scheduled and the lack of objection after 13 days
8 have passed, I'll grant the motion to shorten.

9 I'll also grant the request to extend the
10 preliminary injunction which is unopposed. The legal
11 support for the rationale behind the debtors' request for a
12 preliminary injunction has been addressed repeatedly by this
13 Court as well as by the district court in In re Purdue
14 Pharma L.P., 619 BR 38 (S.D.N.Y. 2020). Those legal
15 authorities and that rationale remain persuasive today. The
16 debtors' cases are at a critical inflection point given the
17 pending appeal of the order of the district court reversing
18 the confirmation order and the agreement since that order of
19 the district court was entered and the appeals brought by
20 the debtors of the settlement term sheet negotiated in the
21 mediation conducted by Judge Chapman and facilitated by the
22 continuation of the injunction to permit the parties to
23 focus on that mediation.

24 So in light of those developments and the
25 expedited appeal directed by the Second Circuit, I believe

1 weighing the four factors to be considered for this motion
2 as detailed in the prior decisions of this Court and the
3 district court on similar requests earlier in these cases,
4 each of those four factors argues for a continuation of the
5 injunction through the next omnibus date. And in light of
6 that, you can e-mail the order to chambers which, as I
7 understand it, tracks the prior extensions of the
8 preliminary injunction except for updates to reflect today's
9 hearing and the new deadlines which would be April 27th as
10 well as the answer or response deadline of May 2nd and a
11 pretrial conference on June 15th.

12 MR. TOBAK: Thank you, Your Honor. We will do
13 that.

14 THE COURT: Okay. Very well. So I think that
15 concludes this morning's hearing. So I'll sign off at this
16 point. Thank you all.

17 MR. TOBAK: Thank you very much.

18 (Whereupon, these proceedings were concluded at 10:23 a.m.)
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I N D E X

R U L I N G S

DESCRIPTION

PAGE

LINE

Motion of Devin Pratt to file late proof of

21

12

Claim granted under excusable neglect

Motion of Wayne Miller to file proof of

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12

claim after claims bar date granted

Motion to authorize debtors' entry into

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11

amended and restated agreement with HRT

granted

Motion to extend time of preliminary

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10

injunction granted

Motion to shorten time with respect to

27

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Debtors' motion to extend preliminary

injunction granted

C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing transcript is a
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Date: March 24, 2022

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